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FILED

DISTRICT COURT OF GUAM

AUG 19 2005 *nbc*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

11	UNITED STATES OF AMERICA,)	CRIMINAL CASE NO. <u>05-00047</u>
12	Plaintiff,)	
13	vs.)	<u>PLEA AGREEMENT</u>
14	JASON COBURIAN ORTIOLA,)	
15	Defendant.)	
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17 Pursuant to Rule 11(c)(1)(B), the United States and the defendant, JASON COBURIAN
18 ORTIOLA, enter into the following plea agreement:

19 1. The defendant agrees to plead guilty to Counts I and II of an Indictment charging him
20 with Distribution of Methamphetamine Hydrochloride (ice), in violation of Title 21, United
21 States Code, § 841(a)(1), and Carrying a Firearm During the Course of Drug Trafficking, in
22 violation of Title 18, United States Code, § 924(c).

23 2(a) The defendant, JASON COBURIAN ORTIOLA, further agrees to fully and
24 truthfully cooperate with Federal law enforcement agents concerning their investigation of
25 trafficking in controlled substances, and other related offenses. Cooperation shall include
26 providing all information known to defendant regarding any criminal activity, including but not

1 limited to the offense to which he is pleading guilty. Cooperation will also include complying
2 with all reasonable instructions from the United States; submitting to interviews by investigators
3 and attorneys at such reasonable times and places to be determined by counsel for the United
4 States; producing to the United States all non-privileged documents (including claimed personal
5 documents) and other materials in the possession, custody or control of defendant requested by
6 attorneys and agents of the United States; and testifying fully and truthfully before any grand
7 juries, hearings, trials or any other proceedings where defendant's testimony is deemed by the
8 United States to be relevant. Defendant understands that such cooperation shall be provided to
9 any state, territorial, local or federal law enforcement agencies designated by counsel for the
10 United States. Further, it is understood and agreed that defendant shall not directly, indirectly, or
11 intentionally disclose anything defendant knows or had done concerning the United States'
12 investigation to anyone other than defendant's attorney. Defendant agrees to take no steps
13 directly or indirectly to warn any subject of this investigation that defendant, a subject or anyone
14 else is being investigated.
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16 2(b) The United States will make this cooperation known to the Court prior to the
17 defendant's sentencing. The defendant further understands that he remains liable and subject to
18 prosecution for any criminal schemes of which he does not fully advise the United States, or for
19 any material omissions in this regard.

20 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
21 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
22 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
23 success of any prosecution.

24 2(d) Except as otherwise herein provided, and in particular in Paragraph 10, the United
25 States agrees not to prosecute defendant for any other non-violent offenses which were
26 committed in the District of Guam or the Northern Mariana Islands (CNMI) which defendant
27 reveals to Federal authorities during his cooperation with the United States. This agreement is
28 limited to crimes committed by defendant in the districts of Guam or the CNMI..

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2 3. The defendant, JASON COBURIAN ORTIOLA, further agrees to submit to a
3 polygraph examination by any qualified Federal polygraph examiner. The defendant understands
4 that such polygraph examinations may include, but will not be limited to, his knowledge of or
5 involvement in drug trafficking and money laundering activities and his knowledge of other
6 person's involvement in such activities. Defendant understands that the government will rely on
7 the polygraph in assessing whether he has been fully truthful.

8 4. The defendant, JASON COBURIAN ORTIOLA, understands that the maximum
9 sentence for Distribution of Methamphetamine Hydrochloride (ice) in a quantity of
10 approximately one-half (.5) grams net weight is a term of twenty (20) years imprisonment, a
11 \$1,000,000 fine, and a \$100 special assessment fee, which must be paid at the time of sentencing.
12 Any sentence imposed may include a term of not more than three (3) years supervised release in
13 addition to such terms of imprisonment. Defendant understands that if he violates a condition of
14 supervised release at any time prior to the expiration of such term, the court may revoke the term
15 of supervised release and sentence him up to an additional two (2) years of incarceration pursuant
16 to 18 U.S.C. § 3583(e)(3).

17 The defendant, JASON COBURIAN ORTIOLA, understands that the maximum sentence
18 for Carrying a Firearm During the Course of Drug Trafficking is a mandatory minimum term of
19 five (5) year imprisonment, and a \$100 special assessment fee, which must be paid at the time of
20 sentencing. This term of imprisonment must run consecutively to any other sentence of
21 incarceration imposed on the defendant. In addition, any sentence imposed may include a term
22 of not more than three (3) years supervised release in addition to such term of imprisonment.
23 Defendant understands that if he violates a condition of supervised release at any time prior to
24 the expiration of such term, the court may revoke the term of supervised release and sentence
25 him up to an additional two (2) years of incarceration pursuant to 18 U.S.C. § 3583(e)(3).

26 4(b) If defendant cooperates as set forth in Paragraphs 2 and 3, the government will
27 recommend that defendant receive the statutory minimum, or the minimum term of incarceration
28 recommended by the Sentencing Guidelines, whichever is greater.

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4(c) If the United States believes the defendant has provided "substantial assistance" as defined by Sentencing Guidelines 5K1.1, the United States will request the court to depart below the statutory minimum pursuant to Title 18, United States Code, § 3553(e), and will, as provided by Sentencing Guidelines 5K1.1, request the court to depart below the applicable guidelines range, when fixing a sentence for defendant and may, within one year after sentencing herein, move the Court to order relief pursuant to Rule 35, Rules of Criminal Procedure to whatever guidelines range or sentence of incarceration the United States in its sole discretion deems appropriate. Defendant acknowledges that the United States has made no promise, implied or otherwise, that defendant will be granted a departure for substantial assistance. Defendant further acknowledges that no promise of any kind has been made that a motion requesting such departure will be made except as otherwise provided herein.

The United States agrees to consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the U. S. Attorney, defendant has provided substantial assistance which would merit a government request for a downward departure from the mandatory statutory minimum or the applicable Guidelines sentencing range:

- (1) the United States' evaluation of the significance and usefulness of any assistance rendered by defendant;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by defendant;
- (3) the nature and extent of defendant's assistance;
- (4) any injuries suffered or any danger or risk of injury to defendant or defendant's family resulting from any assistance provided by defendant; and
- (5) the timeliness of any assistance provided by defendant.

It is understood that even if a motion for departure is made by the United States, based upon defendant's perceived substantial assistance, the final decision as to how much, if any, reduction in sentence is warranted because of that assistance, rests solely with the District Court.

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2 4(d) The government will recommend a fine within the Sentencing Guidelines range. If
3 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
4 full disclosure of his financial status to the United States Attorney's Office by completing a
5 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
6 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

7 5. The defendant understands that to establish a violation of Distribution of
8 Methamphetamine Hydrochloride (ice) in a quantity of approximately one-half (.5) grams net
9 weight, as charged pursuant to Title 21, United States Code, § 841(a)(1), the government must
10 prove each of the following elements beyond a reasonable doubt:

11 First: the defendant knowingly delivered methamphetamine
12 hydrochloride;

13 Second: the defendant knew that it was methamphetamine hydrochloride
14 or some other prohibited drug; and

15 Third: defendant distributed an amount of approximately one-half
16 (.5) grams net weight.

17 The defendant understands that to establish a violation of Carrying a Firearm In
18 Commission of a Drug Trafficking Crime, in violation of Title 18, United States Code § 924(c),
19 the government must prove each of the following elements beyond a reasonable doubt:

20 First: the defendant committed the crime of distribution of a controlled
21 substance as alleged in Count I of the indictment;

22 Second: the defendant knowingly carried a firearm; and

23 Third: the defendant carried the firearm during and in relation to the
24 crime.

25 6. The defendant agrees that the Sentencing Guidelines apply to this offense. The
26 defendant also understands that the facts he stipulates to herein will be used, pursuant to 1B1.2,
27 in calculating the applicable guidelines level. The Government and the defendant stipulate to the
28 following facts for purposes of the Sentencing Guidelines:

29 (a) The defendant was born in 1980, and is a citizen of the United States.

30 (b) If the defendant cooperates with the United States by providing information

1 concerning the unlawful activities of others, the government agrees that any self-incriminating
2 information so provided will not be used against defendant in assessing his punishment, and
3 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
4 in determining the applicable guidelines range.

5 (c) The defendant is employed as a police officer with the Guam Police Department. On
6 June 3, 2005, defendant sold approximately one-half (.5) gram net weight of methamphetamine
7 hydrochloride (ice) to another person for \$300. At that time defendant was in uniform and was
8 carrying his service pistol, a Smith & Wesson .9mm pistol, Model 5906, Serial Number
9 TVD2476. This firearm was carried during and in relation to the crime of distribution of a
10 controlled substance.

11 (d) The defendant understands that notwithstanding any agreement of the parties, the
12 United States Probation Office will make an independent application of the Sentencing
13 Guidelines. The defendant acknowledges that should there be discrepancies in the final
14 sentencing guidelines range projected by his counsel or any other person, such discrepancies are
15 not a basis to withdraw his guilty plea.

16 7. The defendant understands that this plea agreement depends on the fullness and
17 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
18 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
19 material omissions or intentional misstatements or engage in criminal conduct after the entry of
20 his plea agreement and before sentencing, the government will be free from its obligations under
21 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
22 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
23 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
24 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
25 any and all information, in whatever form, that he has provided pursuant to this plea agreement
26 or otherwise; defendant shall not assert any claim under the United States Constitution, any
27 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
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1 Evidence, or any other provision of law, to attempt to bar such use of the information.
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3 8. Defendant understands that whether he has completely fulfilled all of the obligations
4 under this agreement shall be determined by the court in an appropriate proceeding at which any
5 disclosures and documents provided by defendant shall be admissible and at which the United
6 States shall be required to establish any breach by a preponderance of the evidence. In
7 determining whether there has been a breach, the parties agree that any polygraph results and the
8 polygrapher's conclusions and opinions shall be admissible.

9 9. The defendant understands that his sentencing may be continued, at the sole discretion
10 of the United States, until after the indictment and trial of any associates involved. This will also
11 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
12 waives any right he may have to any speedy sentencing and hereby agrees to any continuance of
13 his sentencing date as it may become necessary.

14 10. In exchange for the government's concessions in this plea agreement, the defendant
15 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
16 the sentence imposed in this case. The defendant understands and agrees that the government
17 has bargained for a criminal conviction arising from his criminal conduct. If at any time
18 defendant's guilty plea or conviction is rejected, withdrawn, vacated or reversed, for whatever
19 reason, or is rendered invalid for any reason, or if any change of law renders the conduct for
20 which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
21 another charge encompassing the same or similar conduct. In such event, defendant waives any
22 objections, motions or defenses based upon the Statute of Limitations, Speedy Trial Act, or
23 constitutional restrictions as to the time of bringing such charges.

24 11. The defendant acknowledges that he has been advised of his rights as set forth below
25 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
26 had sufficient opportunity to reflect upon, and understands the following:

27 (a) The nature and elements of the charge and the mandatory minimum penalty provided
28 by law, if any, and the maximum possible penalty provided by law;

(b) His right to be represented by an attorney;

(c) His right to plead not guilty and the right to be tried by a jury and at that trial, the right to be represented by counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself, that is, the right not to testify;

(d) That if he pleads guilty, there will not be a further trial of any kind on the charges to which such plea is entered so that by entering into this plea agreement, he waives, that is, gives up, the right to a trial;

(e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court does not accept the sentencing recommendations of the government or his counsel;

(f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions about the offenses to which he has pled, under oath, and that if he answers these questions under oath, on the record, his answers may later be used against him in prosecution for perjury or false statement if an answer is untrue;

(g) That he agrees that the plea agreement is voluntary and not a result of any force, threats or promises apart from this plea agreement;

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2 (h) The defendant is satisfied with the representation of his lawyer and feels that his
3 lawyer has done everything possible for his defense.
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5 DATED: AUG 19 2005

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7
8 JASON COBURIAN ORTIOLA
9 Defendant

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11 HOWARD TRAPP
12 Attorney for Defendant

13 LEONARDO M. RAPADAS
14 United States Attorney
15 Districts of Guam and CNMI

16 DATED: 8/19/05

17 By: Karon V. Johnson

18 KARON V. JOHNSON
19 Assistant U.S. Attorney

20 DATED: 8/19/05

21 RUSSELL C. STODDARD
22 First Assistant U.S. Attorney